



## Pennsylvania Department of Environmental Protection

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August 4, 2010

Secretary

717-787-2814

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AUG 10 2010

EPA, REGION III  
OFFICE OF REGIONAL ADMINISTRATOR

Mr. Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (Mail Code: 3RA00)  
Philadelphia, PA 19103-2029

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AUG 11 2010

Re: Implementation of the Greenhouse Gas Tailoring Rule

Dear Mr. Garvin:

Division Director (3AP00)

This "60-day letter" responds to U.S. Environmental Protection Agency (EPA) Administrator's request for information concerning the implementation of the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule" (Tailoring Rule) published in the *Federal Register* on June 3, 2010. See 75 *Fed. Reg.* 31514. Specifically, EPA has requested, in relevant part, that states explain whether they will apply the meaning of the term "subject to regulation" as established by EPA in the June 3, 2010, final rule for the prevention of significant deterioration (PSD) and Part 70 Title V permitting programs. For states applying the meaning of the term "subject to regulation," EPA wants to know "whether the states intend to do so without undertaking a regulatory or legislative process...". 75 *Fed. Reg.* 31525.

The Pennsylvania Department of Environmental Protection (DEP) believes that it has adequate statutory and regulatory authority to apply the meaning of the term "subject to regulation" as established by EPA in the federal PSD and Title V permitting programs. Therefore, no legislative or regulatory amendments will be necessary for the DEP to implement the Tailoring Rule in this Commonwealth. However, DEP's PSD permitting program does not apply to sources under the jurisdiction of local air pollution control programs in Philadelphia and Allegheny counties.

### PA DEP Will Apply the Meaning of "Subject To Regulation" as Established by EPA

Under Section 4 of the Air Pollution Control Act, 35 P.S. §4004, DEP is empowered to "implement the provisions of the Clean Air Act in the Commonwealth." In addition, the definition of the term "subject to regulation" in 40 CFR §52.21(b)(49) is adopted and incorporated by reference in 25 *Pa. Code* §127.83 (relating to adoption of program). The DEP's federally enforceable PSD Program was approved by EPA as a revision to the State Implementation Plan (SIP) on August 24, 1984. (See 49 FR 33,127) Therefore, we believe that we have adequate authority to implement EPA's Tailoring Rule.

Federal PSD Requirements Incorporated by Reference in the *Pennsylvania Code*

The federal PSD requirements promulgated by the EPA Administrator in 40 CFR Part 52 under Section 161 of the Clean Air Act (CAA), 42 U.S.C. §7471, are adopted in their entirety and incorporated by reference in 25 *Pa. Code* §127.83 (relating to adoption of program). The June 3, 2010, Tailoring Rule provisions codified in 40 CFR §52.21 are automatically adopted and incorporated by reference in the *Pennsylvania Code* and will become effective in this Commonwealth on August 2, 2010. On August 21, 1984, DEP's PSD program was approved by EPA as a SIP revision and codified in 40 CFR §52.2058. (See 49 FR 33,127) Consequently, DEP will implement EPA's Tailoring Rule without pursuing legislative or regulatory amendments to the PSD program.

Title V Program

Pennsylvania's Title V program was approved by EPA on August 29, 1996. (See 61 Fed. Reg. 39,597) The owner or operator of each source subject to Title V must obtain an operating permit, which assures the source's compliance with all "applicable requirements," which include all PSD requirements. (See 25 *Pa. Code* §127.502) An *applicable requirement* is one that applies to any source at a Title V facility and includes among other things, (i) a requirement promulgated or approved by EPA under the CAA or regulations adopted under the act through rulemaking at the time of issuance, but have future effective compliance dates; (ii) a standard provided for in the Commonwealth's SIP approved by EPA under Title I of the CAA, that implements the relevant provisions of the CAA, including revisions to the plan; (iii) a term or condition of preconstruction permits issued under regulations approved or promulgated through rulemaking under Title I, including Part C or D of the CAA. (See 25 *Pa. Code* §121.1) Therefore, the Tailoring Rule provisions would be considered an "applicable requirement" under Pennsylvania's approved Title V Program.

Additionally, subparagraph (iv) of the definition of *Title V facility*, codified in 25 *Pa. Code* §121.1, provides that a Title V facility includes a source located at a facility that does not meet the requirements of a major stationary source under Sections 112, Section 302, or Title I, Part D of the CAA after the EPA Administrator completes a rulemaking requiring regulation of those sources under Title V of the CAA. (See 25 *Pa. Code* §121.1). Because the major source GHG emission thresholds in the June 3, 2010, Tailoring Rule, expressed in CO2 equivalents, do not meet the major source thresholds in subparagraphs (i)-(iii) of the *Title V facility* definition, DEP believes that the owner or operator of any stationary source with CO2 equivalent emissions that meet or exceed the Tailoring Rule thresholds would be subject to regulation under DEP's existing Title V Program. Therefore, it is our belief that existing statutory and regulatory authority will ensure that the requirements of the Tailoring Rule are implemented consistently with EPA's June 3, 2010, final rule.

Conclusion

DEP believes that it has adequate authority to implement the Tailoring Rule for sources under its jurisdiction. Therefore, we conclude that no revisions to Pennsylvania's Air Pollution Control Act or its implementing regulations will be necessary in order to implement the Tailoring Rule.

Should you have any questions or need additional information, please contact Joyce E. Epps, Director, Bureau of Air Quality, by e-mail at [jeepps@state.pa.us](mailto:jeepps@state.pa.us) or by telephone at 717-787-9702.

Sincerely,

A handwritten signature in black ink that reads "John Hanger". The signature is written in a cursive style with a large, stylized "J" and "H".

John Hanger  
Secretary